No. 09-830

In the Supreme Court of the United States

BALMORIS ALEXANDER CONTRERAS-MARTINEZ,
PETITIONER

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ELENA KAGAN
Solicitor General
Counsel of Record
TONY WEST
Assistant Attorney General
DONALD E. KEENER
CAROL FEDERIGHI
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether "adolescents in El Salvador who refuse to join the gangs of that country because of their opposition to the gangs' violent and criminal activities" constitute a "particular social group" under the asylum provisions of the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is unreported. The decisions of the Board of Immigration Appeals (Pet. App. 6a-8a) and the immigration judge (Pet. App. 9a-27a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 13, 2009. The petition for a writ of certiorari was filed on January 11, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA or Act), 8 U.S.C. 1101 *et seq.*, provides that the Secretary of Homeland Security (Secretary) or the Attorney Gen-

eral "may" grant asylum to an alien who demonstrates that he is a "refugee." 8 U.S.C. 1158(b)(1)(A); see 8 C.F.R. 208.13(a), 1208.13(a) ("The burden of proof is on the applicant for asylum to establish that he or she is a refugee."). The INA defines "refugee" as an alien "who is unable or unwilling to" return to his country of origin "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. 1101(a)(42)(A).

The INA does not further define "particular social group." In a precedential decision issued in 1985, the Board of Immigration Appeals (BIA or Board) described that phrase as referring to a "group of persons all of whom share a common, immutable characteristic" that "the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *In re Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985), overruled in part on other grounds by *In re Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987). The Board suggested that the shared characteristic "might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership." *Ibid.* The Board emphasized, however, that whether a proposed group qualifies "remains to be determined on a case-by-case basis." *Ibid.*

Between 1985 and 1997, the Board's decisions identified four "particular social groups": persons identified as homosexuals by the Cuban government;[1] members of

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[1] *In re Toboso-Alfonso*, 20 I. & N. Dec. 819, 821-823 (B.I.A. 1990).

the Marehan subclan of the Darood clan in Somalia;[2] "young women of the Tchamba-Kunsuntu Tribe [of northern Togo] who have not had [female genital mutilation (FGM)], as practiced by that tribe, and who oppose the practice";[3] and Filipinos of mixed Filipino and Chinese ancestry.[4] The BIA also suggested that, "in appropriate circumstances," an alien could establish a valid asylum claim based on persecution as a "former member of the national police" of El Salvador.[5] Several of these decisions relied not only on an immutable/fundamental group characteristic, but also on the recognizability of the group in the pertinent society. See *In re V-T-S-*, 21 I. & N. Dec. 792, 798 (B.I.A. 1997) (relying on evidence that a percentage of the population had "an identifiable Chinese background"); *In re H-*, 21 I. & N. Dec. 337, 342-343 (B.I.A. 1996) (reasoning that "clan membership is a highly recognizable, immutable characteristic" and that clan members were "identifiable as a group based upon linguistic commonalities").

Between 2006 and 2008, in response to the evolving nature of claims presented by aliens seeking asylum and developing case law in the courts of appeals, the BIA issued four precedential decisions that were designed to provide "greater specificity" in defining the phrase "particular social group." *In re S-E-G-*, 24 I. & N. Dec. 579, 582 (B.I.A. 2008).[6] Those decisions restated the

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[2] *In re H-*, 21 I. & N. Dec. 337, 342-343 (B.I.A. 1996).

[3] *In re Kasinga*, 21 I. & N. Dec. 357, 365 (B.I.A. 1996).

[4] *In re V-T-S-*, 21 I. & N. Dec. 792, 798 (B.I.A. 1997).

[5] *In re Fuentes*, 19 I. & N. Dec. 658, 662-663 (B.I.A. 1988).

[6] On December 7, 2000, the former Immigration and Naturalization Service issued a proposed rule that would have provided guidance regarding the definitions of "persecution" and "membership in a

immutable/fundamental characteristic requirement. See *In re A-M-E-*, 24 I. & N. Dec. 69, 73-74 (B.I.A.), aff'd *sub nom. Ucelo-Gomez* v. *Mukasey*, 509 F.3d 70 (2d Cir. 2007); *In re C-A-*, 23 I. & N. Dec. 951, 956 (B.I.A.), aff'd *sub nom. Castillo-Arias* v. *United States Att'y Gen.*, 446 F.3d 1190 (11th Cir. 2006). They also "reaffirmed" (*In re A-M-E-*, 24 I. & N. Dec. at 74) that, consistent with the Board's previous decisions, a qualifying social group must possess a recognized level of "social visibility," which describes "the extent to which members of a society perceive those with the characteristic in question as a member of a social group." *In re E-A-G-*, 24 I. & N. Dec. 591, 594 (B.I.A. 2008). The Board explained that this approach was consistent with its prior decisions, which had considered the "recognizability" of a proposed group. See *In re C-A-*, 23 I. & N. Dec. at 959. The Board also referred to guidelines issued by the United Nations High Commissioner for Refugees (UNHCR), which discuss the "visibility" of a proposed group and whether the group is perceived as such by the pertinent society. *Id.* at 956, 960.

The Board's recent decisions also stated that the analysis of "particular social group" claims involves consideration of whether the group in question is defined with sufficient "particularity." *In re A-M-E-*, 24 I. & N. Dec. at 74, 76; *In re C-A-*, 23 I. & N. Dec. at 957. The proposed group cannot be too "amorphous" or "indeterminate" or be defined by a characteristic "too subjective, inchoate, and variable to provide the sole basis for membership." *In re A-M-E-*, 24 I. & N. Dec. at 76; see *ibid.* (stating that "[t]he terms 'wealthy' and 'affluent' stand-

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particular social group." 65 Fed. Reg. 76,588. That proposed rule has been neither withdrawn nor finalized during the subsequent nine years.

ing alone are too amorphous to provide an adequate benchmark for determining group membership"). The Board also stated that it will consider whether the proposed group "share[s] a common characteristic other than their risk of being persecuted," or instead is "defined *exclusively* by the fact that [the group] is targeted for persecution." *In re C-A-*, 23 I. & N. Dec. at 956, 960; see *id.* at 957 (finding group of "noncriminal informants" "too loosely defined to meet the requirement of particularity").

In the two most recent of these precedential decisions, the Board applied the above considerations in addressing, and rejecting, claims of asylum based on resistance to gang recruitment. In *In re S-E-G-*, the Board rejected a proposed social group of "Salvadoran youth who have been subjected to recruitment efforts by [the Mara Salvatrucha gang] and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition to the gang's values and activities." 24 I. & N. Dec. at 581, 588. And in *In re E-A-G-*, the Board rejected a proposed social group of young "persons resistant to gang membership" in Honduras. 24 I. & N. Dec. at 593.

2. Petitioner is a native and citizen of El Salvador who entered the United States without authorization in 2004. Pet. App. 10a. He was apprehended by immigration officials, who commenced removal proceedings. *Ibid.* Petitioner admitted the factual allegations against him and conceded removability (*ibid.*), but sought asylum based on his membership in a "particular social group" consisting of "adolescents in El Salvador who refuse to join the gangs of that country because of their

opposition to the gangs' violent and criminal activities." *Id.* at 22a.[7]

3. After a hearing, an immigration judge (IJ) denied petitioner's application for asylum and ordered him removed to El Salvador. Pet. App. 9a-27a. The IJ found that petitioner's testimony was credible, *id.* at 21a, and that the conduct petitioner described was sufficient to demonstrate that he had "been persecuted by the gangs in El Salvador," *id.* at 22a. For two different reasons, however, the IJ concluded that petitioner had failed to "demonstrate that this past persecution was inflicted on account of his claimed membership in a particular social group." *Ibid.* (emphasis deleted); see *id.* at 22a-26a.

The IJ first determined that petitioner's proposed social group was "too tenuous" to qualify as a particular social group under the INA. Pet. App. 24a. The IJ stated that "[a]ccepting [petitioner's] designation would create a situation where virtually every non-criminal adolescent in El Salvador that was targeted by gang members would qualify for asylum in the United States." *Ibid.*

The IJ also concluded that, even assuming that petitioner is a member of a "particular social group," he "failed to show that he was persecuted *on account of* his alleged membership in this group." Pet. App. 24a. Petitioner had attempted to "distinguish[] his persecution from other accounts of forced recruitment by stating that he was persecuted because of his opposition to the

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[7] Petitioner also requested withholding of removal and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85. See Pet. App. 10a. Those requests for relief are not at issue in this petition for a writ of certiorari. See Pet. 7 n.3.

gangs' violent and criminal activities, not simply because he refused to join." *Ibid.* The IJ determined, however, that that was "a distinction without a difference," and, in any event, she found there was "no independent evidence of record to support [petitioner's] assertion that he was persecuted for something more than his simple refusal to join a gang." *Ibid.*

4. Petitioner appealed to the BIA, which dismissed his appeal in a non-precedential, single-member order. Pet. App. 6a-8a. Citing its precedential decisions in *In re S-E-G-* and *In re E-A-G-*, the Board concluded that petitioner's proposed social group was "too broad and ill defined to constitute a discrete particular social group within the meaning of the" INA. *Id.* at 7a.

5. Petitioner filed a petition for judicial review of the BIA's order, which the court of appeals denied in an unpublished, per curiam decision. Pet. App. 1a-5a. Like the IJ and the BIA, the court of appeals concluded that petitioner's "proposed social group * * * [was] too broad and ill-defined to qualify as a 'particular social group'" under the INA. *Id.* at 3a. The court explained that petitioner "has not demonstrated that members of his proposed group are perceived by gang members or others in El Salvador as a discrete group." *Id.* at 4a. It also noted that "the proposed group is inchoate, as it is comprised of a potentially large and diffuse segment of El Salvadorean society." *Id.* at 4a-5a. Finally, the court of appeals stated that, "[t]o the extent that [petitioner] suggests that the Board's definition of 'particular social group' should not control here," the court "defer[ed] to [the BIA's] reasonable interpretation of that term." *Id.* at 5a.

ARGUMENT

Petitioner seeks further review of the court of appeals' holding that "adolescents in El Salvador who refuse to join the gangs of that country because of their opposition to the gangs' violent and criminal activity" do not constitute a "particular social group" under the INA's asylum provisions. Pet. App. 3a. The unpublished decision of the court of appeals in this case is correct, and it does not conflict with the decisions of any other court of appeals. In addition, to the extent that there is currently a disagreement among the circuits about the validity of the BIA's general approach to assessing "particular social group" claims, that conflict is lopsided and recently arising, and this case would be a poor vehicle for addressing it in any event. Accordingly, the petition for a writ of certiorari should be denied.

1. The BIA has long been of the view—and recently reaffirmed—that whether a proposed group qualifies as a "particular social group" must "be determined on a case-by-case basis." *In re C-A-*, 23 I. & N. Dec. 951, 955 (B.I.A. 2006) (quoting *In re Acosta*, 19 I. & N. Dec. 211, 234 (B.I.A. 1985)). Cf. *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 448 (1987) (stating that "[t]here is obviously some ambiguity in a term like 'well-founded fear,'" which is also used in the definition of "refugee," "which can only be given concrete meaning through a process of case-by-case adjudication").

No court of appeals has held that people who refuse to join a gang because they object to the gang's violent activities constitute a "particular social group" under the INA. Only one circuit has considered that question in published opinions, and it has repeatedly reached the same conclusion as the Fourth Circuit reached in its unpublished decision in this case. See *Barrios* v.

Holder, 581 F.3d 849, 854 (9th Cir. 2009) (declining to recognize group consisting of "young males in Guatemala who are targeted for gang recruitment but refuse because they disagree with the gang's criminal activities"); *Ramos-Lopez* v. *Holder*, 563 F.3d 855, 861-862 (9th Cir. 2009) ("young Honduran men who have been recruited by the MS-13, but who refuse to join"); *Santos-Lemus* v. *Mukasey*, 542 F.3d 738, 745-746 (9th Cir. 2008) ("young men in El Salvador resisting gang violence"). Four other circuits have rejected similar claims in unpublished decisions.[8] Even the circuit whose decisions form the sole basis for petitioner's claim of a circuit conflict has stated—in one of the very decisions on which petitioner relies—that it has "no quarrel with" the view that "young Honduran men who resist being recruited into gangs" do not constitute a "particular social group." *Gatimi* v. *Holder*, 578 F.3d 611, 616 (7th Cir. 2009) (citing *Ramos-Lopez*, *supra*). There is thus no conflict in the circuits with respect to the specific question presented in this case.[9]

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[8] See *Zavaleta-Lopez* v. *Attorney Gen. of United States*, No. 08-3673, 2010 WL 125852, at *1 (3d Cir. Jan. 14, 2010) (per curiam) ("young men who have been targeted by gangs for membership and who have refused to join gangs"); *De Vasquez* v. *United States Att'y Gen.*, 345 Fed. Appx. 441, 445-447 (11th Cir. 2009) (per curiam) ("poor girls who come from fatherless homes, with no adult male protective figures . . . who resist recruitment or criticize [a criminal gang in El Salvador called] Maras") (citation omitted); *Cua-Tumax* v. *Holder*, 343 Fed. Appx. 995, 997 n.7 (5th Cir. 2009) (per curiam) ("Guatemalan youths who resist gang recruitment"); *Vasquez* v. *Holder*, 343 Fed. Appx. 681, 682 (2d Cir. 2009) ("individuals who have been actively recruited by gangs, but who have refused to join because they oppose the gangs").

[9] The Sixth Circuit recently concluded that "former gang members" who cannot "leave save by rejoining the organization" constitute a "particular social group" for purposes of triggering eligibility for

2. Petitioner argues (Pet. 9-14) that the decision of the court of appeals in this case deepens a conflict in the circuits about the more general question of the role of "social visibility" and "particularity" in determining whether an applicant for an asylum has carried his burden of demonstrating membership in a particular social group. That claim does not warrant this Court's review.

a. As an initial matter, the Fourth Circuit's brief and unpublished decision in this case does not establish binding precedent for future cases. Thus, although the Board is entitled to considerable deference when interpreting a vague and open-ended statutory term such as "particular social group," see *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 424-425 (1999), it remains open to litigants within the Fourth Circuit to argue that the BIA's approach to these issues is impermissible and does not merit deference by the courts.

b. To the extent there is currently a conflict among the circuits about the permissible methodology for evaluating "particular social group" claims, that conflict is both lopsided and less well-developed than petitioner suggests. Petitioner himself asserts that the split in the

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withholding of removal. *Urbina-Mejia* v. *Holder*, No. 09-3567, 2010 WL 743845, at *1 (Mar. 5, 2010). As a concurring judge observed, however, that conclusion was unnecessary to the court's decision, because the Sixth Circuit ultimately concluded that the alien in question was ineligible for withholding of removal because he had previously committed a "serious nonpolitical crime." *Id.* at *8 (Siler, J., concurring) (quoting 8 U.S.C. 1231(b)(3)(B)(iii)); see *id.* at *7-*8. In any event, *Urbina-Mejia* involved former gang members—a group that is likely to be smaller and may be easier to define than one consisting of those who resisted joining a gang because they objected to the nature of the gang's activities. See *Benitez Ramos* v. *Holder*, 589 F.3d 426, 428, 429 (7th Cir. 2009) (concluding that a former gang member who had gang-related tattoos on his face was a member of a "particular social group" for purposes of seeking withholding of removal).

circuits is 8-1 against his position, see Pet. 10-12, with the other two regional circuits having "signaled * * * approval" of or "hint[ing]" that they might adopt the majority view, Pet. 13.

Petitioner also overstates the clarity of the law in the lower courts. In addition to the Fourth Circuit, three other regional circuits have addressed the issue only in unpublished opinions. See Pet. 12-13 (citing unpublished decisions from the Third, Fifth, and Tenth Circuits).[10] In addition, the Sixth Circuit's decision in *Al-Ghorbani* v. *Holder*, 585 F.3d 980 (2009), did not actually turn on either the particularity or the social visibility criterion. See *id.* at 994-997. It is thus not accurate to state (Pet. 13) that the "overwhelming majority of the circuits have squarely addressed the issue," and this Court's review would be premature at this time.

c. Petitioner is correct that two recent Seventh Circuit decisions have criticized the BIA's "social visibility" criterion and that the second of those decisions appeared to criticize the Board's "particularity" criterion as well. See Pet. 10-12 (discussing *Gatimi*, *supra*, and *Benitez Ramos* v. *Holder*, 589 F.3d 426 (7th Cir. 2009)). As noted previously, however, *Gatimi* actually undermines petitioner's contention that he is eligible for asylum, because it states that the Seventh Circuit "ha[s] no quarrel with the" view that "young Honduran men who resist being recruited into gangs" do not constitute a particular social group. 578 F.3d at 616. In addition, the Seventh Circuit's discussion of these issues in *Benitez*

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[10] Petitioner also cites the Eleventh Circuit's nonprecedential decision in *De Vasquez* v. *United States Att'y Gen.*, 345 Fed. Appx. 441 (2009), but that court accepted the Board's particularity and social visibility criteria in its earlier published decision *Castillo-Arias* v. *United States Att'y Gen.*, 446 F.3d 1190 (2006), which affirmed the BIA's decision in *In re C-A-*, 23 I. & N. Dec. 951, 956 (B.I.A. 2006).

Ramos was dicta, because the court had already concluded that it would "violat[e] * * * the *Chenery* doctrine" for it to affirm the BIA's decision based on the social visibility criterion. 589 F.3d at 430.

The Seventh Circuit's criticisms of the BIA's approach to these issues also rest on incorrect premises. First, the Seventh Circuit stated in *Gatimi* that the Board has not "attempted, in this or any other case, to explain the reasoning behind the criterion of social visibility" and that the Board "has been inconsistent rather than silent" because it has not "repudiat[ed]" earlier decisions that recognized particular social groups without referring to social visibility. 578 F.3d at 615-616. But the Seventh Circuit in *Gatimi* did not discuss the BIA's 2006 precedential decision in *In re C-A-*, which explained that the Board's previous "decisions involving social groups *have* considered the recognizability, i.e., the social visibility of the group in question," and that the "particular social group[s]" previously recognized by the Board "involved characteristics that were highly visible and recognizable by others in the country in question." 23 I. & N. Dec. at 959-960 (emphasis added). *Gatimi* likewise did not discuss the Board's precedential decision in *In re A-M-E-*, which described *In re C-A-* as having "*reaffirm[ed]* the requirement that the shared characteristic of the group should generally be recognizable by others in the community," 24 I. & N. Dec. 69, 74 (B.I.A. 2007) (emphasis added), or the Board's more recent precedential decision in *In re S-E-G-*, which contains a detailed discussion of the Board's views regarding social visibility and particularity. See pp. 4-5, *supra* (discussing *S-E-G-* and the Board's companion decision in *In re E-A-G-*).

Second, *Gatimi* and *Benitez Ramos* were based on the incorrect premise that the BIA views its "social visi-

bility" criterion as requiring that members of a particular social group must literally be visible to the naked eye. See *Benitez Ramos*, 589 F.3d at 430 (describing the BIA's view as being "that you can be a member of a particular social group only if a complete stranger could identify you as a member if he encountered you in the street"); *Gatimi*, 578 F.3d at 616 ("The only way, on the Board's view, that the Mungiki defectors can qualify as members of a particular social group is by pinning a target to their backs with the legend 'I am a Mungiki defector.'"). Although it appears that the government's briefs and oral argument in those cases may have contributed to the confusion, see *Benitez Ramos*, 589 F.3d at 430; *Gatimi*, 578 F.3d at 616, that crabbed interpretation is not required by the Board's precedential decisions.

In its precedential decision in *In re E-A-G-*, the BIA defined "social visibility" as "the extent to which members of a society perceive those with the characteristic in question as members of a social group." 24 I. & N. Dec. 591, 594 (B.I.A. 2006). Consistent with that statement, the Board's precedential decisions have equated "social visibility" with the extent to which the relevant society perceives there to be a group in the first place, rather than the case with which one may necessarily be able to identify particular individuals as members of such a group. See *In re S-E-G-*, 24 I. & N. Dec. at 586-588 (discussing "general societal perception" and finding little evidence that Salvadoran youth who resist gang recruitment "would be 'perceived as a group' by society"); *In re A-M-E-*, 24 I. & N. Dec. at 74 (finding little evidence that "wealthy Guatemalans" "would be recognized as a group that is at a greater risk of crime

in general or extortion or robbery in particular").[11] And in *In re Kasinga*, the Board recognized a group of women who had not yet been subject to FGM and who opposed the practice as constituting a particular social group, 21 I. & N. Dec. 357, 365-366 (B.I.A. 1996), two characteristics that also are not necessarily outwardly visible.

3. In any event, even if there were a conflict in the circuits that presently warranted this Court's review (and there is not), this case also would not be an appropriate vehicle for addressing it.

First, it is difficult to see how petitioner's proposed social group—one based on resistance to gang recruitment—would fit within the "particular social group" category no matter how that category is defined. As the IJ explained, accepting petitioner's argument would threaten to "create a situation wherein virtually every non-criminal adolescent in El Salvador that was tar-

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[11] This understanding of the "social visibility" requirement is also supported by an agency decision that was later vacated by the Attorney General in anticipation of regulations that have never been finalized, but that remains instructive even if non-precedential. See note 6, *supra*. Although the BIA had not yet coined the shorthand phrase "social visibility" at the time of its decision in *In re R-A-*, 22 I. & N. Dec. 906 (B.I.A. 1999), the Board's decision in that case addressed this criterion under the heading of "Cognizableness." *Id.* at 917-920. The Board explained that the purported group must be "recognized and understood" as a separate "societal faction" by the population of the relevant country, and the Board stated that the analysis included whether members of the putative group "view themselves as members of this group" and whether "their * * * oppressors see their victim[s] as part of this group." *Id.* at 918. The Board did not, however, require that individual members of a group be immediately recognizable, but rather focused on whether "distinctions [are drawn] within [the pertinent] society between those who share and those who do not share the characteristic." *Id.* at 919.

geted by gang members would qualify for asylum in the United States." Pet. App. 24a; see *In re C-A-*, 23 I. & N. Dec. at 960-961 (refusing to recognize a "particular social group" whose membership would not be much "narrower than the general population" of the relevant country). Even the Seventh Circuit appears to have "no quarrel with" the view that claims such as petitioner's should ultimately fail. *Gatimi*, 578 F.3d at 616.

Second, petitioner is no longer a member of the social group that he proposed. Petitioner defined his proposed social group as "adolescents in El Salvador who refuse to join the gangs of that country because of their opposition to the gangs' violent and criminal activities." Pet. App. 22a. But petitioner is currently 24 years old, see Administrative Record 425 (giving petitioner's date of birth as October 14, 1985), and is thus no longer an "adolescent[]" under any conceivable definition of that term. Although the BIA has recognized that the prospect of an alien's aging out of a "particular social group" presents unique interpretative questions, it has not yet taken a definitive position about how those questions should be approached or resolved. See *In re S-E-G-*, 24 I. & N. Dec. 579, 583-584 (B.I.A. 2008). Cf. *Ixtlilco-Morales* v. *Keisler*, 507 F.3d 651, 655 (8th Cir. 2007) (affirming agency determination that alien's increase in age was a "fundamental change in personal circumstances" that rebutted the presumption of a well-founded fear of future persecution created by the past abuse he suffered as a child). In addition, the issue was not considered by the BIA or the court of appeals in this case, notwithstanding the fact that petitioner was already 23 years old at the time of both of those decisions. See Pet. App. 1a, 6a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELENA KAGAN
Solicitor General
TONY WEST
Assistant Attorney General
DONALD E. KEENER
CAROL FEDERIGHI
Attorneys

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